

6.1	Petitions to Initiate Child Protective Proceedings	175
6.2	Persons Who May Submit a Petition to Court	176
6.3	Prosecuting Attorney's Role	176
6.4	Required Contents of Petitions	177
6.5	Required Information About Other Court Matters Involving Members of Same Family	179
6.6	Preliminary Inquiries	180
6.7	Court's Options Following Preliminary Inquiries	181

In this chapter. . .

This chapter discusses the requirements for filing a proper petition with the Family Division of Circuit Court in a child protective proceeding. It also discusses the required procedures for conducting a preliminary inquiry, an informal proceeding that may be used when a child has not been taken into protective custody and the petitioner does not request that the child be placed. If a child is in protective custody or the petitioner requests placement of the child, a preliminary hearing must be conducted. See Chapters 7 and 8.

6.1 Petitions to Initiate Child Protective Proceedings

A petition* is “a complaint or other written allegation, verified in the manner provided in MCR 2.114(B), that a parent, guardian, nonparent adult, or legal custodian has harmed or failed to properly care for a child” MCR 3.903(A)(19). The purposes of a petition are to frame the issues for the court and to provide notice of the allegations to a respondent. See *In re Hatcher*, 443 Mich 426, 434 n 7 (1993) (“First, [a petition] is a court document which should set forth the alleged basis of the court’s jurisdiction over a particular child. The petition names the child and the respondents and frames the issues to be addressed by the court. The court may not inquire into matters not alleged in the petition. . . . The second principal function of the petition is to communicate to the respondents a notice of the charges against them so that they might evaluate their situation and prepare a response. The description of the parents’ acts of commission or omission should be put in terms specific enough to allow a defense to be prepared. [Duquette, Michigan Child Welfare Law, ch 5, pp 47-48.]”).

Absent exigent circumstances, a request for court action to protect a child must be in the form of a petition. MCR 3.961(A).^{*} See also SCAO Forms JC 01–02 (Complaint [Request for Action]), which may be utilized when a child is placed before a formal petition is presented. An officer may without court order remove a child from the child’s surroundings and take the child into temporary custody if, after investigation, the officer has reasonable

*See SCAO
Form JC 04.

*See Chapter 3
for a discussion
of emergency
protective
custody.

grounds to conclude that the health, safety, or welfare of the child is endangered. MCR 3.963(A) and MCL 712A.14(1). The officer must then ensure that a petition is prepared and submitted to the court. MCR 3.963(C)(5).

6.2 Persons Who May Submit a Petition to Court

*See Section 2.19 (required response by DHS following investigation of suspected abuse or neglect).

MCL 712A.11(1) allows “a person” to give to a court information concerning a child, and the court may then take appropriate action concerning the child. Typically, either a Children’s Protective Services (CPS) worker or a prosecuting attorney acting on behalf of the Department of Human Services (DHS) drafts and files a petition seeking court jurisdiction over a child suspected of being abused or neglected.* However, school officials may file petitions alleging “educational neglect” under MCL 712A.2(b)(1). The Children’s Ombudsman, guardians, custodians, and foster parents (as “concerned persons”) may file petitions seeking termination of parental rights.

Within 24 hours after the Department of Human Services determines that a child was severely physically injured or sexually abused, the agency must file a petition seeking Family Division jurisdiction under MCL 712A.2(b). MCL 722.637.

*See Section 18.2 for a detailed discussion of these petition requirements.

Petitions requesting termination of parental rights. The agency, the child, a guardian, legal custodian, or representative of the child, a “concerned person,” the Children’s Ombudsman, or the prosecuting attorney may file a petition requesting termination of parental rights. MCR 3.977(A)(2). A request for termination of parental rights must be made in an original, amended, or supplemental petition. *Id.* Termination of parental rights at the initial dispositional hearing may be requested in an original or amended petition, and termination of parental rights on the basis of changed circumstances or after the child has been placed in foster care may be requested in a supplemental petition.*

*See Section 2.22 for discussion of MCL 722.638.

In some cases, MCL 722.638(1) requires the DHS to file a petition seeking court jurisdiction and termination of parental rights at the initial dispositional hearing.*

6.3 Prosecuting Attorney’s Role

Reviewing petition, appearing at proceedings, and serving as legal consultant. If the court requests, the prosecuting attorney must review the petition for legal sufficiency and appear at any proceeding. MCL 712A.17(4) and MCR 3.914(A). “Prosecuting attorney” means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney. MCR 3.903(C)(9). A court’s compliance with a prosecuting attorney’s request for notice of hearings does

not constitute a court request to make a formal appearance in a proceeding. *In re Hill*, 206 Mich App 689, 692–93 (1994).

In addition, if requested by the DHS or an agent under contract with the DHS, the prosecuting attorney must act as legal consultant for the DHS or its agent at all stages of the proceedings. If the prosecuting attorney does not appear on behalf of the DHS or its agent, the DHS may contract with an attorney of its choice for legal representation. MCL 712A.17(5) and MCR 3.914(C)(1)–(2).

Prosecuting attorney as petitioner. The prosecuting attorney may file a petition independent of the DHS, but he or she may not amend or supplement a petition filed by another party. In *In re Jagers*, 224 Mich App 359 (1997), although the DHS had retained independent legal counsel, the prosecuting attorney filed a petition alleging abuse and neglect. The Court of Appeals held that the prosecuting attorney has standing, independent of the DHS, to file a petition in child protective proceedings. *Id.* at 362. MCL 712A.11(1) allows “a person” to give information to the court that may serve as the basis for the court’s assumption of jurisdiction. *Jagers, supra* at 362–63. The Court also distinguished *In re Hill, supra*, where the prosecutor was prevented from amending and supplementing petitions originally submitted by the DHS, which had obtained legal representation by the attorney general’s office. The prosecuting attorney may not, the Court in *Hill* held, amend another party’s petition. The public policy of protecting children supports allowing a prosecuting attorney to act independently of the DHS when they disagree on whether a petition should be filed. *Jagers, supra* at 365.

See also MCL 712A.19b(1) and MCR 3.977(A)(2)(f) (prosecuting attorney may file petition for termination of parental rights if the child remains in foster care, “without regard to whether the prosecuting attorney is representing or acting as legal consultant to the agency or any other party”).

6.4 Required Contents of Petitions

MCR 3.961(B) sets forth the required contents of a petition.* That rule states as follows:

“(B) *Content of Petition.* A petition must contain the following information, if known:

- (1) The child’s name, address, and date of birth.
- (2) The names and addresses of:
 - (a) the child’s mother and father,

*Sections 18.18–18.31 contain petition requirements for termination of parental rights under each subsection of §19b(3) of the Juvenile Code.

*See Section 4.14 for required procedures.

*See Chapter 20 for required procedures.

*See Section 6.5, below.

(b) the parent, guardian, legal custodian, or person who has custody of the child, if other than a mother or father,

(c) the nearest known relative of the child, if no parent, guardian, or legal custodian can be found, and

(d) any court with prior continuing jurisdiction.*

(3) The essential facts that constitute an offense against the child under the Juvenile Code.

(4) A citation to the section of the Juvenile Code relied on for jurisdiction.

(5) The child's membership or eligibility for membership in an American Indian tribe or band, if any, and the identity of the tribe.*

(6) The type of relief requested. A request for removal of the child or a parent or for termination of parental rights at the initial disposition must be specifically stated.

(7) The information required by MCR 3.206(A)(4), identifying whether a family division matter involving members of the same family is or was pending.”* MCR 3.961(B)(1)–(7).

Information provided in the petition shall be verified and may be upon information and belief. MCL 712A.11(3) and *In re Jagers*, 224 Mich App 359, 365 (1997). If any of the facts required to be contained in the petition are unknown to the petitioner, the petition must state that the facts are unknown. MCL 712A.11(4). A petition may be verified by an oath or affirmation of the person having knowledge of the facts stated, or by a signed and dated declaration. MCR 2.114(B)(2) states:

“(B) Verification.

* * *

“(2) If a document is required or permitted to be verified, it may be verified by

(a) oath or affirmation of the party or of someone having knowledge of the facts stated; or

(b) except as to an affidavit, including the following signed and dated declaration: ‘I declare

that the statements above are true to the best of my information, knowledge, and belief.’

“In addition to the sanctions provided by subrule (E), a person who knowingly makes a false declaration under subrule (B)(2)(b) may be found in contempt of court.”

A petition need not enumerate every theory or argument in support of Family Division jurisdiction. *In re Arntz*, 125 Mich App 634, 639 (1983), rev’d on other grounds 418 Mich 941 (1984). Nor must the petition disprove every possible innocent explanation for an alleged injury. *In re Martin*, 167 Mich App 715, 723–24 (1988).

A petition may be amended at any stage of the proceedings as the ends of justice require. MCL 712A.11(6). See *In re Slis*, 144 Mich App 678, 684 (1985) (requirements of due process were satisfied where petition was amended on the record to include respondent-parent’s name).

Requirements of MCR 5.113. MCR 5.113 governs the form and filing of papers with the court. It applies to child protective proceedings. MCR 3.901(A)(1). A petition filed under the Juvenile Code must contain a petition number, including a prefix indicating the year and a suffix containing a case-type code. The case-type code for child protective proceedings is “NA.”

6.5 Required Information About Other Court Matters Involving Members of Same Family

A petition must identify whether a Family Division matter involving members of the same family is or was pending, and contain the information, if known, required by MCR 3.206(A)(4). MCR 3.961(B)(7).

Note: In many instances, petitioners do not provide the information required by MCR 3.206(A)(4), due at least in part to the difficulties in gathering information on families who have cases pending in other Michigan counties.

MCR 3.206(A)(4)(a)–(b) requires the petition to contain one of the two following statements:

“(a) There is no other pending or resolved action within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition.

“(b) An action within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject

of the complaint or petition has been previously filed in [this court]/[____ Court], where it was given docket number ____ and was assigned to Judge _____. The action [remains]/[is no longer] pending.”

Whenever practicable, two or more matters within the Family Division’s jurisdiction pending in the same judicial circuit and involving members of the same family must be assigned to the judge who was assigned the first matter. MCL 600.1023.

6.6 Preliminary Inquiries

If a person gives information to the court that a child is within MCL 712A.2(b) or (c), a preliminary inquiry may be made to determine whether the interests of the public or the child require that further action be taken. MCL 712A.11(1).

“When a petition is not accompanied by a request for placement of the child and the child is not in temporary custody, the court may conduct a preliminary inquiry to determine the appropriate action to be taken on a petition.” MCR 3.962(A). On the other hand, if the child is in protective custody or placement is requested, the court must hold a preliminary hearing within 24 hours after the child is taken into protective custody. MCR 3.965(A). “‘Placement’ means court-approved transfer of physical custody of a child to foster care, a shelter home, a hospital, or a private treatment agency.” MCR 3.903(C)(8). “‘Foster care’ means 24-hour a day substitute care for children placed away from their parents, guardians, or legal custodians, and for whom the court has given the Family Independence Agency placement and care responsibility, including, but not limited to,

(a) care provided to a child in a foster family home, foster family group home, or child caring institution licensed or approved under MCL 722.111 *et seq.*, or

(b) care provided to a child in a relative’s home pursuant to an order of the court.” MCR 3.903(C)(4).

MCL 712A.13a(1)(e) contains a substantially similar definition of “foster care.”

“Relative” means:

“an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the

spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father.” MCL 712A.13a(1)(j).

A preliminary inquiry is an “informal review by the court to determine appropriate action on a petition.” MCR 3.903(A)(22). No hearing is held: the judge or referee is only required to review the petition to determine the appropriate course of action. “A preliminary inquiry need not be conducted on the record or in the presence of the parties.” MCR 3.962(B).

Note: If the petition is not authorized for filing after the preliminary inquiry, any record of the proceeding may be treated as a non-public file. In such cases, nothing would be filed with the county clerk. See Section 22.1.

6.7 Court’s Options Following Preliminary Inquiries

MCR 3.962(B) sets forth the court’s options following a preliminary inquiry. That rule states:

“At the preliminary inquiry, the court may:

- (1) Deny authorization of the petition.
- (2) Refer the matter to alternative services.
- (3) Authorize the filing of the petition if it contains the information required by MCR 3.961(B), and there is probable cause to believe that one or more allegations is true. For the purpose of this subrule, probable cause may be established with such information and in such manner as the court deems sufficient.” MCR 3.962(B)(1)–(3).

MCL 712A.13a(2) states in part:

“If a juvenile is alleged to be within the provisions of [MCL 712A.2(b)], the court may authorize a petition to be filed at the conclusion of the preliminary hearing or inquiry. The court may authorize the petition upon a showing of probable cause that 1 or more of the

allegations in the petition are true and fall within the provisions of [MCL 712A.2(b)].”

“‘Petition authorized to be filed’ refers to written permission given by the court to file a petition containing the formal allegations against the . . . respondent with the clerk of the court.” MCR 3.903(A)(20). “An authorized petition is deemed ‘filed’ when it is delivered to, and accepted by, the clerk of the court.” MCR 3.903(A)(9).

If the court authorizes the petition and the child is not in custody, a trial must be held within six months after the filing of the petition, unless adjourned for good cause under MCR 3.923(G). MCR 3.972(A).